

C. Additional Injunctive Relief/Offset Projects

83. As further injunctive relief, (Company name) shall implement or perform, in accordance with the provisions of this Section, projects to reduce the amount of NOx emitted into the environment nationwide from mobile and stationary sources. Subject to the provisions of Paragraph 84, (Company name) shall be obligated to spend (amount per company) for performance of these projects.

84. (Company name) may satisfy up to (appropriate amount per company) of its obligation under Paragraph 83 through projects (referred to below as "Incentive Projects") to achieve verifiable reductions in NOx emissions from HDDEs manufactured by (Company name), beyond those required by law or by other provisions of this Consent Decree, up to 200,000 tons of NOx. For example, (Company name) may satisfy a portion of its offset obligation under Paragraph 83 by reducing emissions from Pre-Settlement Engines, other than Low NOx Rebuild Engines, with the vehicle owners' consent, at the time the engines are brought in for service. Any emission reductions used in the Incentive Projects shall not be used to satisfy any other Consent Decree obligations or in the A,B&T program. The dollar reduction in (Company name)'s obligation under Paragraph 83 shall be (per company Consent Decree).

85. (Company name)'s obligation under Paragraph 83 net of

any reduction it elects to pursue through Incentive Projects under Paragraph 84 (the "Net Project Funds") shall be satisfied as follows:

(a) 20% of the Net Project Funds shall be spent on the projects agreed to in, or selected pursuant to, the California Settlement Agreement with respect to (Company name)'s California Pre-Settlement and Interim Engines. (Company name)'s satisfaction of its obligations under the California Settlement Agreement with respect to this 20% of the Net Project Funds shall fully satisfy its obligation to the United States under this Consent Decree with respect to such amount.

(b) 25% of the Net Project Funds shall be spent on projects to be proposed by (Company name) consistent with the criteria set forth in Paragraph 89, after giving due consideration to projects submitted by third parties during the public comment period under Paragraph 149 of this Consent Decree (the "Company Proposed Projects").

(c) 55% of the Net Project Funds shall be spent on the projects set forth in Appendix E to this Consent Decree (the "Appendix E Projects").

86. Within 120 days of entry of this Decree, (Company name), if it chooses to perform Incentive Projects, shall submit to the United States and CARB, for review and approval by each, a single plan for the performance or implementation of its

Incentive Projects. Within 120 days of entry of this Decree, (Company name) shall submit to the United States a plan for performance or implementation of its Company Proposed Projects and its Appendix E Projects (collectively, the plans required to be submitted pursuant to this Paragraph are referred to as "the Plans"). The Plans shall include a general description of each project (Company name) proposes to perform or implement, including the timetable for implementation of each project and an estimate of the emission reductions that each project will achieve. (Company name) shall include in the Plans the amount of money to be spent on the Company Proposed Projects and Appendix E Projects. Each date for commencement of a project shall be the earliest practicable, given the nature of the project, after the United States' approval of the Scope of Work in accordance with Paragraph 92.

87. The Incentive Projects shall be completed no later than six years after entry of this Consent Decree. All Company Proposed Projects and Appendix E Projects shall be completed no later than eight years after entry of the Consent Decree.

88. (Company name)'s monitoring, administrative, or overhead costs associated with the implementation of any Company Proposed Projects or Appendix E Projects shall not be included in the amounts spent on the projects, except to the extent such costs would be deemed reasonable, allocable, and allowable under

48 C.F.R. Part 31, Subpart 31.2.

89. Any Company Proposed Projects shall be consistent with the following priorities and shall meet the following criteria:

Priorities:

(a) projects providing the greatest amount of NOx emission reductions that are readily quantifiable, verifiable, and cost effective;

(b) projects providing such emission reductions in the near-term;

(c) projects that will leverage the use of funds from other sources;

(d) projects that will reduce NOx in those areas most severely affected by ozone and acid deposition; and

(e) projects that will focus on heavy-duty engines, unless other NOx reduction opportunities are shown to be more cost-effective and efficient.

(f) projects providing the greatest amount of PM reductions that are readily quantifiable, verifiable, and cost effective;

Criteria:

(a) the project may not be for emission reduction obligations already placed on (Company name) under any federal, state or local law or which have been proposed for adoption as a mandatory federal, state, or local program;

(b) the project may not duplicate programs already funded

by the United States or that the United States is required by statute to perform;

(c) if it is a research and development project, the project shall demonstrate technologies having the goal of reducing HDDE NO_x plus NMHC emissions below 1.5 g/bhp-hr and/or PM emissions below .05 g/bhp-hr and having the greatest likelihood of resulting in maximum long-term NO_x or PM reductions. The results of such research programs shall be reported annually and shall not be considered confidential business information;

(d) the project should have broad impact or should address areas significantly affected by ozone and acid deposition; and

(e) the project must be one (Company name) would not otherwise be legally required to perform outside of this Consent Decree or one previously planned by (Company name). For this purpose, a project shall be deemed to have been previously planned by (Company name) if the project is reflected in a written plan approved by management on or before February 1, 1998.

90. The United States shall, within 30 days, review and either disapprove or approve the Plans. If the United States disapproves any of the Plans, in whole or in part, it shall provide (Company name) with proposed modifications, and (Company name) shall have 30 days to submit a revised version of the disapproved Plan(s) to the United States incorporating the United

States' proposed modifications; but, if (Company name) disputes the proposed modifications, the dispute shall be governed by the dispute resolution provisions of Section XVI. With respect to the Incentive Project Plan(s), if the modifications requested by the United States conflict with modifications requested by CARB, the dispute shall be governed by the dispute resolution provisions of Section XVI. In reviewing (Company name)'s Company Proposed Projects Plan, the United States may consider, in addition to the priorities and criteria set forth above, whether the proposed projects, when viewed together with the proposals of the other Settling HDDE Manufacturers, will achieve maximum environmental benefit in terms of NOx and PM reductions nationwide, and are cost-effective in terms of expected NOx and PM reductions.

91. Within 90 days of the United States' approval of each of the Plans, or resolution of any dispute by the Court, (Company name) shall submit a Scope of Work for each project in each approved Plan, including the manner in which it will be implemented, the timetable for implementation, the expected reductions in the emission of air pollutants, the location in which each project will be performed or in which the NOx reductions are likely to occur, and any issue that must be resolved for the project to be successful. With respect to any Incentive Project, (Company name) shall submit to the United States and CARB, for review and approval by each, a single Scope

of Work.

92. The United States shall review and approve or disapprove each proposed Scope of Work submitted under Paragraph 91 within 30 days of receiving it. If a Scope of Work is disapproved, the United States shall provide (Company name) with an explanation as to why it is being disapproved along with proposed modifications. (Company name) shall incorporate the proposed modifications within 30 days of receiving the proposed modifications; but, if (Company name) disputes the proposed modifications, the dispute shall be governed by the dispute resolution provisions of Section XVI. With respect to the Scope of Work for each Incentive Project, if the modifications requested by the United States conflict with modifications requested by CARB, the dispute shall be governed by the dispute resolution provisions of Section XVI.

93. Following the United States' approval of each Scope of Work, (Company name) shall commence implementation of the project covered by that Scope of Work by the date set out in the Scope of Work and shall comply with the implementation schedule set forth in the Scope of Work. (Company name) shall be granted an extension of the final completion date for any project for good cause shown.

94. Each Scope of Work shall provide a certification that, as of the date the certification is submitted, (Company name) is

not required by any federal, state, or local law to perform or develop any of the projects it proposes to implement or perform, nor is (Company name) required to perform or develop the projects by any agreement, other than this Consent Decree, by grant, or as injunctive relief in any other case. Except as set forth in Paragraph 85, (Company name) shall further certify that it has not received, and is not presently negotiating to receive, and will not seek, credit for the projects in any other environmental enforcement proceeding.

95. The United States' approval of a Plan or a Scope of Work under this Section shall not be construed as a permit, modification to a permit, or determination concerning compliance with any local, state or federal law.

96. (Company name) shall submit to the United States a completion report for each project no later than 30 days after the completion date. The report shall contain the following information:

(a) with respect to each approved project: (i) a detailed description of the project as implemented, including a summary for public disclosure; and (ii) certification that the project has been implemented or performed in accordance with the requirements of this Consent Decree and the applicable Scope of Work;

(b) with respect to each approved project of the

Company Proposed Projects or Appendix E Projects: (i) a detailed analysis of full costs; and (ii) a description of the environmental or public health benefits resulting from implementation of the project (including, where applicable, an estimation of the emission reduction benefits); and

- (c) with respect to each approved project included in the Incentive Projects, a certification that the emission reduction amounts required under Paragraph 84 to receive the corresponding dollar reductions in its obligation under Paragraph 84 have been achieved.

97. (Company name) shall submit a report as required by Paragraph 105 for any quarter in which project implementation activities have occurred, or project expenditures are made, or in which problems related to a project are encountered. Such report shall include a summary of such activities, expenditures with respect to projects, or problems and their solutions.

98. In itemizing its costs in the completion reports for Company Proposed Projects and Appendix E Projects, (Company name) shall clearly identify and provide adequate documentation to substantiate all project costs.

99. Within 30 days following the date for completion of its Incentive Projects, (Company name) shall certify to the United States that it has fully implemented its Incentive Projects and has achieved all the emission reductions required for the dollar

reduction set forth in Paragraph 84. If (Company name) cannot make the required certification, then any dollar reductions that (Company name) has not qualified to receive shall become available for the implementation of Supplemental Offset Projects.

Twenty percent of the available funds shall be spent on projects agreed to in, or selected pursuant to, the California Settlement Agreement, and eighty percent shall be spent on projects approved by the United States in accordance with this Section. Within 120 days following the deadline for completing the Incentive Projects, (Company name) shall submit a Supplemental Offset Project Plan proposing projects consistent with the priorities and criteria set forth in this Section. The Supplemental Offset Project Plan shall be subject to the United States' review and approval or disapproval in the same manner as set forth in Paragraph 90 above, and (Company name) shall submit Scopes of Work and implement any approved Scope of Work in the same manner as set forth in Paragraphs 92 and 93 above, except that all Supplemental Offset Projects shall be completed within 3 years from the date of EPA's approval of the applicable Scope of Work.

100. During the term of this Consent Decree, in any prepared public statements, oral or written, made by the (Company name) about the projects under this Section, (Company name) shall include the following language: "This project was undertaken pursuant to an agreement with the United States in connection

with settlement of disputed claims in an enforcement action under the Clean Air Act.”

101. Except as provided herein, (Company name) shall not use or rely on the emission reductions generated as part of any projects undertaken pursuant to the approved Scope of Work in any Federal or State emission averaging, banking, trading or other emission compliance program. If (Company name) proposes to implement a project to research and develop new technology or new fuels, the project must include a field demonstration of the technology, if practicable. No emission reductions generated by the engines required by the project may be used or relied on for purposes of Federal or State emission averaging, banking, trading, or other emission compliance programs. However, if (Company name) thereafter employs that technology in engines other than those specifically required by the project, nothing herein shall prohibit the use of the credits generated from the additional vehicles in Federal or State emission averaging, banking, trading, or other emission compliance programs.